



22 CFR Part 41

[Public Notice: 11458]

RIN 1400-AE82

Visas: Documentation of Nonimmigrants under the Immigration and Nationality Act;

Validity of Visa

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule replaces an outdated form name and number with a revised form name and number used for processing exchange visitor visas and updates the agency responsible for maintaining the form.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*.].

FOR FURTHER INFORMATION CONTACT: Andrea B. Lage, Acting Regulatory Coordinator, U.S. Department of State, Bureau of Consular Affairs, Visa Services, 600 19th Street NW, Washington, DC 20522, 202-485-7586, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION: This rule makes a technical update to replace an outdated reference to Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, with the updated name of Form DS-2019, Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT) (hereinafter, Form DS-2019), which the Department of State has maintained since 2001.

Effective October 1, 1999, in accordance with sections 301 and 312 of the Foreign Affairs Reform and Restructuring Act of 1998, as amended¹, the United States Information Agency, which administered the Exchange Visitor Program, was abolished and its functions were transferred to the Department of State. Following the transfer, the Department of State's Bureau

¹ 22 U.S.C. 6501.

of Educational and Cultural Affairs (ECA) assumed responsibility for the Exchange Visitor Program. On October 11, 2001, the Office of Management and Budget approved ECA's request to replace the Form IAP-66 with Form DS-2019. Then, on April 11, 2002, ECA published an interim final rule that replaced the outdated Form IAP-66 with the new Form DS-2019 in several sections of 22 CFR part 62,² but no corresponding changes were made in 22 CFR part 41 at the time.

Exchange Visitor Program sponsors issue Forms DS-2019 to prospective exchange visitors. The Form DS-2019 identifies the exchange visitor and his or her designated sponsor, and provides a brief description of the exchange visitor's program, including the start and end date, category of exchange, and an estimate of the cost of the exchange program. The prospective exchange visitor must provide a properly executed Form DS-2019 to a consular officer to be issued a J-1 nonimmigrant visa. See 22 CFR 41.62(a)(1). After being admitted to the United States, a responsible officer extending the program of an exchange visitor is required to provide the exchange visitor a duly executed Form DS-2019 reflecting the extension and provide a notification copy of such form to the Department of State. 22 CFR 62.43(b).

By amending 22 CFR 41.112, this rule will update the Department's regulations governing the process through which the validity of an expired nonimmigrant visa may be automatically extended to the date of application for readmission under certain circumstances. Certain exchange visitors may apply with DHS for readmission after an absence of 30 days or less solely in a contiguous territory or adjacent islands other than Cuba by presenting a current Form DS-2019 and a valid passport.³ 22 CFR 41.112(d)(2)(ii). Additionally, in cases where DHS has changed the original nonimmigrant classification to another nonimmigrant classification, the

² 67 FR 17613 (April 11, 2002).

³ To be eligible to seek admission based on automatic extension of nonimmigrant visa validity, the applicant must have maintained and intend to resume nonimmigrant status; be applying for readmission within the authorized period of initial admission or extension of stay; not require authorization for admission under section 212(d)(3) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(3); not have applied for a new visa while abroad; and not be a national of a country identified as supporting terrorism in the Department's annual Patterns of Global Terrorism report.

validity of the expired or unexpired nonimmigrant visa may be considered to be automatically extended to the date of application for admission, and the visa may be converted as necessary to that changed classification. 22 CFR 41.112(d)(1)(ii).

REGULATORY FINDINGS:

Administrative Procedure Act

This rule constitutes a rule of policy and procedure, and as a result, it is exempt from notice and comment under 5 U.S.C. 553(b)(3)(A).

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b), it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, the Department of State certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule does not require the Department of State to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involves foreign individuals, and does not directly or substantially affect state, local, or tribal governments, or businesses.

Congressional Review Act

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of

United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State has examined this rule in light of Executive Order 13563, and has determined that the rulemaking is consistent with the guidance therein. The Department of State has reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. There are no anticipated direct costs to the public associated with this rule.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department of State has reviewed the rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments,

and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Form DS-2019, Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT), is approved under the PRA (OMB Control No. 1405-0119).

List of Subjects in 22 CFR Part 41

Aliens, Cultural Exchange Program, Nonimmigrant, Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR Part 41 is amended to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295); 1323; 1361; 2651a.

2. In § 41.112, revise paragraph (d)(2)(i) to read as follows:

§ 41.112 Validity of visa.

* * * * *

(d) ***

(2) * * *

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by DHS to show an unexpired period of initial admission or extension of stay, *provided that* in the case of a qualified F student or the accompanying spouse or child of such student, is in possession of a

current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, issued by the school that the student has been authorized to attend by DHS and endorsed by the issuing school official to indicate the period of initial admission or extension of stay authorized by DHS, and *provided that* in the case of a qualified J exchange visitor or the accompanying spouse or child of such exchange visitor, is in possession of a current Form DS-2019, Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT), issued and endorsed by the Department of State-designated sponsor of the exchange program, to indicate the period of initial admission authorized by DHS or the extension of stay authorized by the Department of State;

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